

II- MID-YEAR STATISTICS

The Office of the Independent Police Auditor (IPA) and the San José Police Department Internal Affairs Unit (IA) are separate offices available for the public to file complaints against members of the San José Police Department (SJPD).

This section will report the number of cases received from January 1, 2002 through June 30, 2002. It will also provide a breakdown of the allegations in the different types of cases filed, the degree of injury, the sustained rate and the findings. The analysis is only statistical and should not be used to deduce specific and/or conclusive results from the data.

A-How the Complaint Process Works

A complaint is an act of expressed dissatisfaction, which relates to Department operations, personnel conduct or unlawful acts¹. Typically the Internal Affairs Unit conducts administrative investigations that are generally adjudicated through the department. However, in some cases the IA unit may be required to conduct a parallel investigation with a criminal investigation.

The Internal Affairs Unit investigates all allegations involving officer misconduct. Investigators at Internal Affairs are fact finders only. They do not sustain a complaint nor do they recommend discipline. In cases where the IA Investigator concludes that the investigation supports sustainable allegations, the investigation is sent to the

subject officer's chain of command. The commanding officer reviews the investigation and/or conducts further investigation to determine if the complaint should be sustained. If the Chief of Police agrees with the recommendation from the commanding officers to sustain the complaint, the case is sent to the Discipline Review Panel to determine the type of discipline to impose.

Once an investigation is completed, a copy of the investigative file is sent to the IPA for auditing. By prior practice, the IA unit would immediately send the complainant and the subject officer a closing letter advising them of the finding in their case. Because this practice did not allow time for the IPA to agree or disagree with the results of the investigation before a notification was sent, the IPA and the IA Unit mutually agreed to a change in the process. The new process gives the IPA two weeks to review the completed investigation before a notification is made or a closing letter sent. During this two-week period, if the IPA determines that there is an area of concern with the investigation, the IA Commander is notified and the two-week time line is stayed. Notifications and/or closing letters are held until the area of concern is satisfied or the case is re-opened for further investigation. This process provides the IPA an opportunity to request an investigation before notices are sent. If the IPA makes no request during the two-week period, the IA unit proceeds to send the closing letters/notices to the complainant and subject officer.

B- Complaint Classification

All cases are documented thoroughly and divided into six classifications: Formal, Command Review, Policy, Procedural, No Boland, and Inquiry. A **Formal** complaint may be citizen initiated (CI) or department-initiated (DI), which is a complaint initiated by the Chief of Police. These complaints involve the most serious type of allegations and require more in-depth investigation. A **Command Review**² complaint involves allegations of minor transgressions. A Command Review complaint is handled by bringing the matter to the attention of the subject officer's supervisor. A **Policy**³ complaint relates to an established policy properly employed by the officer, which the complainant believes to be inappropriate or invalid. A **Procedural**⁴ is a complaint that after the initial investigation, it is determined that the subject member acted reasonably and within Department policy and procedure given the specific circumstances and that despite the allegation of misconduct, there is no factual basis to support the allegation. A **No Boland** complaint is a complaint that is closed within 30 days from the date the complaint was received due to the complainant failing to sign the Boland Admonishment. State law requires that the complainant sign a Boland Admonishment form in order to have the complaint fully investigated. However, if serious misconduct is alleged, the complaint will be investigated even if the complainant does not sign the Boland form. An **Inquiry** refers to a complaint that is immediately resolved to the satisfaction of the citizen, without requiring an extensive investigation.

The reasons for classifying the complaints into different types are:

- (1) to streamline the investigation process so that cases that do not require a full investigation are resolved sooner while the cases requiring more time are given appropriate time to investigate;
- (2) to track Formal, Command Review, and Procedural complaints by officers' names as part of an "Early Warning" system that identifies those officers qualifying for Intervention Counseling;
- (3) to comply with motions for discovery in criminal and civil proceedings; and
- (4) to identify patterns or trends so that recommendations can be made to change an existing policy or procedure.

C- Break Down of Cases

There were 257 contacts from the public at either the IA or IPA offices from January 1 through June 30, 2002. Illustration I shows a breakdown of the total number of cases (257) received from January 1 through June 30, 2002 by the type of case and by the office that received the complaint. Inquiries was the most numerous type of contact with 85, seven of which were received by the IPA and 78 received by IA. There were 75 Formal Complaints filed either externally by a citizen or internally by the Chief of Police.

Illustration I: Type of Cases

Type of Cases	IPA Intake	IA Intake	Total Cases
Formal Complaints	10	65	75
Command Review Complaints	9	15	24
Procedural Complaints	5	18	23
Policy Complaints	1	0	1
No Boland and Withdrawn Cases	11	12	23
Inquiry (Cases immediately resolved)	7	78	85
Citizen Contacts (Informational)	7	14	21
Pre-Classified (Cases awaiting classification)	4	1	5
Total Cases in 2002 Mid-Year	54	203	257

Formal Complaints involve allegations of misconduct of a more serious nature and are broken into three subcategories. Of the 75 Formal Complaints, 51 were external complaints filed by a citizen, 22 were internal complaints filed by the Chief of Police, and 2 were external complaints initiated by the Chief and involved a citizen.

Illustration II displays the total number of cases received during the years 1998, 1999, 2000, 2001 and from 1/1/2002 to 6/30/2002 at the IPA and IA. During the first half of 2002, the IPA received 54 cases and IA received 203 cases. The IPA received 21% of the total complaints filed during this reporting period.

Illustration II: IPA and IA Intake

Cases Filed at IPA or IA	1998	1999	2000	2001	2002 Mid-Year
IPA Cases	120	229	251	140	54
IA Cases	244	590	443	321	203
Total Cases Received	364	819	694	461	257
Percentage of IPA Received	33%	28%	36%	30%	21%

D- Unnecessary Force Complaints

There were 27 cases that alleged Unnecessary Force (UF). Unnecessary Force complaints are divided into two categories: Class I and Class II.

A Class I complaint involves allegations of moderate and major bodily injuries. All others are Class II complaints, which include alleged injuries ranging from minor to none visible injuries. A complaint can have more than one allegation.

Illustration III: Unnecessary Force Allegations

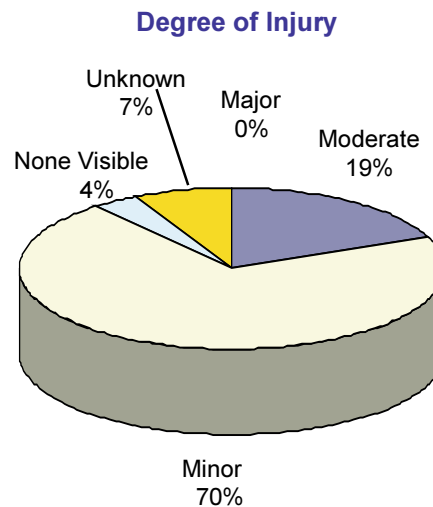
Unnecessary Force	2002 Mid-Year
Class I (Moderate)	4
Class II (Minor)	23
UF Total	27

In illustration IV, the range of injury resulting from the alleged use of force can be from minor to major and includes categories for “None Visible” and “Unknown” degrees of injury.

As of June 30, 2002, there were 27 UF cases with the following distribution of degree of injury: 0% major, 19% moderate, 70% minor, 4% none visible, and 7% unknown. As in past years, minor injuries remain the highest degree of injury alleged by the complainant. Overall, 81% of all reported UF allegations involved minor, none visible, or unknown injuries. Only 19% or five of the 27 UF allegations involved a moderate degree of injury.

Illustration IV: Degree of Injury

Range of Injury	Number	%
Minor	19	70%
Moderate	5	19%
Major	0	0%
Non-visible	1	4%
Unknown	2	7%
Total	27	100%



E- Sustained Rate

During the first half of 2002, four out of 42 Formal CI complaints were sustained. This represents a 10% sustained rate which is down from the 26% sustained rate in 2001, see Illustration V. In contrast, 14 out of 23 Formal DI complaints were sustained resulting in a 61% sustained rate which is slightly lower than the 69% sustained rate recorded in 2001. It should be noted that DI complaints include both internal and external matters. An external matter is where a citizen brought the incident to light, and an internal matter involves misconduct but also personnel issues such as tardiness, abuse of sick leave, etc. The combined sustained rate for Formal cases overall is 28%, down from the 36% recorded in 2001. All these comparisons are intended to provide a mid-year assessment only since it is contrasting a six month period to a year.

Illustration V: Formal Cases Sustained

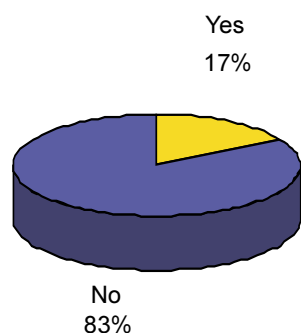
Formal Complaints	Cases Closed	Cases Sustained	Sustained Rate
Citizen Initiated (CI) and Citizen Nexus	42	4	10%
Department Initiated (DI)	23	14	61%
Total	65	18	28%

F- Did the IPA Request Further Action from IA?

The IPA requested further action from IA in 18 cases, or 17%, of the Formal cases it reviewed. This is a slight increase over the 15% recorded in 2001. Requests varied from reopening an investigation to providing the IPA with additional information or documentation.

Illustration VI: Request for Further Action

Request Further Action	Cases Audited	%
Yes	18	17%
No	91	83%
Total Cases Audited	109	100%

IPA Requested for Further Action**G- Did the IPA Agree with the Finding of the Complaint?**

This section reflects the number of times the IPA agreed or disagreed with the resolution of the complaint. The IPA disagreed with the finding of the investigation in five of the 109 Formal cases audited between January 1 and June 30, 2002. Even though the IPA may disagree with the finding of a case for a number of reasons, in most cases where there is a disagreement, weight given to the credibility of the witnesses appears to have been the difference.

Illustration VII: Finding of the Complaint

Agreed/Disagreed with Finding	Cases Audited	%
Agreed	104	95%
Disagreed	5	5%
Total Cases Audited	109	100%

H- Cases where the IPA Disagreed with the Finding

Case #1 –

The complainants alleged that when an officer stopped them for crossing a street, outside of a crosswalk, he yelled at them rudely. The complainants also alleged that when they asked the officer for his name and badge number, the officer pointed to his badge and nametag and said, “here, here”. The officer refused to loan the complainants a pen to write down his name or badge number.

The IPA agreed with the “Not Sustained” finding for the Rude Conduct allegation and disagreed with the finding for the Improper Procedure allegation. The IA investigation concluded that the officer did not comply with current policy, which requires that officers provide citizens with their name and badge number. Instead of sustaining the allegation, the IA bifurcated the complaint and had that allegation addressed by having the subject officer counseled by his supervisor. This is called a Command Review and is one of the options available in handling minor transgressions. The IPA recognizes that at times it is appropriate to address an officer’s actions in the least punitive manner, as is done under a Command Review. The subject officer in this case did not have prior complaints therefore, while the IPA disagrees with the finding, it understands the rationale for the decision and opted not to appeal the finding to the City Manager.

Case #2 –

The complainant alleged that officers twisted his arms and handcuffed him for no reason and slammed his head down on the hood of his car. The complainant alleged that the officers asked him if they could search him and he replied “no” and the officers searched him despite his objection. The complainant asked for the names of the officers and they refused to provide them. The complainant alleges that the officers had no reason to contact him. The supervisor was called to the scene and the complainant was released.

The IPA disagreed with the finding in two of the four allegations. The IPA found that there should have been a separate allegation of Improper Procedure for the officers’ failure to properly identify themselves. This issue was covered in the investigation, but was omitted as a charged allegation. The IPA also disagreed with the Chain of Command’s finding of “Exonerated” for the use of force allegation because the investigation did not prove or disprove the complainant’s or the subject officer’s version of the facts. A Not Sustained finding is more appropriate for the Unnecessary Force allegation. Two of the four allegations were sustained* therefore, the IPA did not appeal this case to the City Manager.

Case #3 –

The complainant alleged that the officers conducted an unlawful search of his home. The complainant alleges that he did not give the officers permission to search his home and

alleges that they did not have a warrant or cause to search his home

The IPA disagreed with the “Exonerated” finding by the Chain of Command because the evidence supports a “Sustained” finding for the unlawful search allegation against the subject officer. It is clear that the subject officer exceeded the scope of his protective sweep search when he searched a small package found in the complainant’s bedroom. The allegation of Improper Procedure was sustained by the Chain of Command because the subject officer did not include in the police report any information about the search of the home or the package. Since one of the allegations was sustained*, the IPA did not appeal the case to the City Manager.

Case #4 –

The complainant alleged that when his vehicle was stopped by an officer, the officer was rude in telling him to “shut up” several times. The complainant also believed he was being harassed by the officers because he questioned the reason for being stopped and because there were four or five officers present during the stop.

While the IPA agrees with the IA finding concerning the justification for the vehicle stop, the IPA disagrees with the IA finding in this case because the investigation was not thorough since it did not interview the subject officer in order to address the allegation of rude conduct. Internal Affairs is currently re-examining this case.

Case #5 –

The complainant alleged that the subject officer stopped her vehicle because he thought she made an illegal turn in front of him almost colliding with his vehicle. The complainant stated that the officer was very angry because of the near collision and this caused the officer to behave in a very rude, angry, and out of control manner. The subject officer is alleged to have used excessive force against a witness bystander who attempted to intervene. The subject officer denied behaving in this manner and stated that his use of force against the witness bystander was justified because the witness was interfering with his official duties. The complainant and witness were unknown to each other. They both described the subject officer’s behavior as extremely rude and out of control. They both stated that the officer pushed, choked and handcuffed the witness for no apparent reason.

The IPA disagreed with the findings of the IA investigation because the IPA found the complainant and witness’ version of the facts to be more consistent. The IPA appealed this case to the City Manager. The finding was not changed.

* It should be noted that the SJPd imposes discipline per case and not for each allegation.